



US Army Corps
of Engineers

Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Public Notice

Number: 200575066

Date: February 4, 2005

Comments Due: February 18, 2005

TO WHOM IT MAY CONCERN:

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) proposes to reissue Regional General permit 59 (RGP) under the authority of Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act (CWA) and for water quality certification or waiver under Section 401 of the CWA for the discharge of dredged and fill material and excavation activities associated with flood protection and flood recovery projects. This notice is to inform interested parties of the proposed reissuance of the RGP and to solicit comments. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/regulatory.html>.

REGIONAL GENERAL PERMIT 59

DISCHARGES OF DREDGED OR FILL MATERIAL AND EXCAVATION IN WATERS OF THE UNITED STATES FOR FLOOD PROTECTION AND RECOVERY PROJECTS WITHIN THE STATE OF UTAH

APPLICANT: General Public

LOCATION: Waters of the United States (waters) within the state of Utah.

PURPOSE: This RGP would authorize the discharge of dredged and fill material, and excavation associated with flood protection projects and flood damage repair projects that do not qualify for authorization under RGP 40 due to impacts to wetlands, other waters, and stream activities normally beyond the scope of RGP 40. Projects that affect only streams and involve the types of activities identified in RGP 40 will continue to be considered by the state engineer under that authority.

PROJECT DESCRIPTION: Only those projects where the Corps determines that a threat to life or property exists, or can reasonably be anticipated, or those projects intended to repair or replace flood damaged structures or fill will be considered for authorization. The types of projects to be considered for authorization include, but are not limited to the construction, repair and/or protection of: levees, roads, bridges, utility lines and structures, work platforms, water treatment facilities, backfill and armoring of streambanks, intakes and diversion structures, channel realignments and other projects that the Corps may reasonably determine as necessary to protect life and property, and facilitate flood recovery. The discharge of dredged and fill material and excavation work authorized by this RGP will be limited to the minimum necessary to complete the project and impacts to wetlands shall be limited to 0.5 acre unless the Corps determines, after any necessary coordination with the other concerned Federal and state agencies, that additional wetland impacts and adverse effects will be minimal.

ADDITIONAL INFORMATION: All parties proposing to complete work under this RGP shall be required to provide the Corps with sufficient information to determine that the work complies with terms and conditions of the RGP. This information shall normally include documentation that the work is flood-related and a standard ENG Form 4345 (Department of the Army permit application) and support documentation to include a written description of the proposed work, including drawings. In exceptional situations where threat to life or property is eminent, and where the Corps determines on the best information available that the proposed work meets the criteria of the RGP, verbal authorization may be granted by the Corps. In any case, the Corps will ensure appropriate coordination with the concerned Federal and state agencies, and the permittee shall submit a standard ENG Form 4345 and supporting information within 30 days after project implementation.

Only those proposals to repair flood damage which are received by the Corps within one year after the flood event will be considered for authorization under this RGP. The time limit for completing authorized projects will be one year from the date of authorization, although the Corps reserves right to extend the authorization time limit for an additional six months when circumstances warrant.

Projects involving the discharge of unsuitable fill material will not be authorized under this RGP. Unsuitable material includes, but is not limited to: metal and wood debris, asphalt, biodegradable construction debris, tires, vehicle parts and bodies, farm machinery, appliances and any other material the Corps deems unsuitable.

The Corps will require mitigation as necessary to ensure minimal affects to the aquatic environment. Mitigation plans will be coordinated with the concerned resource agencies on a case-by-case basis. In urgent situations, authorization of proposed projects may occur in advance of mitigation plan approval.

A project which the Corps determines may affect threatened or endangered species and their critical habitat, or species proposed for such designation by the U.S. Fish and Wildlife Service (FWS) pursuant to the Endangered Species Act will not be authorized without appropriate coordination with the FWS. Similarly, any project that may affect properties listed or eligible for listing on the National Register of Historic Places will not be authorized until the Corps has complied with Title 33, CFR Part 325, Appendix C and Interim Guidance for Implementing Appendix of 33 CFR Part 325 with the New Advisory Council on Historic Preservation Regulations at 36 CFR Part 800 dated June 24, 2002. The Corps will consult with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act, as appropriate.

GENERAL CONDITIONS: Permittees must maintain fills authorized by this general permit in good condition. If any previously unknown historical or archaeological artifacts are discovered while completing an authorized project, work must be stopped and the Corps of Engineers notified. Work may not be resumed until the Corps of Engineers has complied with Title 33, CFR 325, Appendix C. Permittees must allow the Corps of Engineers to inspect authorized projects at any reasonable time. Permittees must make every reasonable effort to prosecute authorized work in a manner so as to minimize adverse impacts to terrestrial and aquatic resources.

SPECIAL CONDITIONS: No proposal which will affect species listed by the Fish and Wildlife Service, pursuant to the Endangered Species Act, as threatened or endangered, or their critical habitat, will be authorized under this general permit. No proposal which will affect historic properties listed on or determined eligible for the National Register of Historic Places will be authorized under this general permit. All granular fill such as earth, sand and gravel placed below the ordinary high water line must be stabilized with appropriately sized rock riprap or other suitable material. Fill material must be clean and free of contaminants in toxic amounts. Disturbance of vegetation must be kept to a minimum. Vegetation

lost to permitted activities must be replaced with similar vegetation as soon as possible after completion of the work. All temporary fills must be removed at work completion. The permittee shall exercise reasonable precaution to protect waters of the United States from unnecessary pollution from contaminants, turbidity and suspended solids during and after construction. These precautions shall include limiting fills to the minimum necessary to achieve project goals and implementing erosion control measures where necessary.

LIMITS OF THIS AUTHORIZATION: This general permit does not obviate the need to obtain other required Federal, state or local authorizations. This general permit does not grant any property rights or exclusive privileges. This general permit does not authorize injury to the property or rights of others. This general permit does not authorize interference with any existing or proposed Federal project.

LIMITS OF FEDERAL LIABILITY: In issuing this general permit, the United States Government does not assume any liability for the following: damages to authorized projects, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes; damages to authorized projects, or uses thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest; damages to persons, property or other authorized or unauthorized activities or structures caused by authorized projects; design or construction deficiencies associated with authorized projects; damage claims associated with any future modification, suspension or revocation of any authorization issued under this general permit.

In issuing individual authorizations under this general permit, the Corps of Engineers must rely on data supplied by applicants. Should it be determined that an applicant has supplied false, incomplete or inaccurate data, the Corps of Engineers reserves the right to suspend, modify or revoke any individual authorization. Failure to comply with the terms and conditions of any authorization issued under this general permit may be grounds for the suspension, modification or revocation of the authorization.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the Utah Division of Water Quality, is required for reissuance of this RGP. The Utah Division of Water Quality intends to issue certification, provided that the proposed work will not violate applicable water quality standards. Projects are usually certified where the project may create diffuse sources (nonpoint sources) of wastes which will occur only during the actual construction activity and where best management practices will be employed to minimize pollution effects. Written comments on water quality certification should be submitted to Mr. William O. Moellmer, Utah Division of Water Quality, 288 North 1460 West, Post Office Box 144870, Salt Lake City, Utah 84114-4870, on or before February 18, 2005.

EVALUATION FACTORS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activities, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice 200575066, must be submitted to the office listed below on or before February 18, 2005:

Ken Jacobson
US Army Corps of Engineers, Sacramento District
400 Rood Avenue, Room 142
Grand Junction, Colorado 81501-2563
Email: Ken.Jacobson@usace.army.mil

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact Mr. Jacobson, at telephone number (970) 243-1199, extension 11, or Email Ken.Jacobson@usace.army.mil.